



New Sales Tax Laws Affecting Contractors Beginning October 1, 2003



Beginning October 1, 2003, all Option 1, Option 2, and Option 3 contractors are required to collect and remit sales tax on their charges for contractor labor unless the labor is performed in connection with the specific construction projects identified below.

Contractor labor is the total amount received for a construction or repair project (including mark-up, overhead, and profit) **less** the cost of tax-paid building materials and subcontracts included in the total amount received.

Contractor is any person who repairs property annexed to or who annexes building materials and fixtures to real estate, including leased property.

Exempt contractor labor charges. All charges for contractor labor performed in connection with the following projects are exempt from sales and use tax. However, all building materials and fixtures used in such construction projects remain taxable according to the contractor option chosen.

- 1 The first or original construction of a building or other structure;
- 2 The addition of an entire room or floor (story) to any existing building. The addition must actually increase the square footage of the building and the number of rooms or floors in the existing building. The exemption is limited to the charges associated with: the construction of the new room or floor, that part of the existing wall, floor, or ceiling that is altered to accommodate the point of access between the new room or floor and the existing building, and any electrical, plumbing, heating, or cooling system modifications needed to support the new room or floor.
- 3 The completion of an unfinished portion of an existing building or structure;
- 4 The restoration, reconstruction, or replacement of a building or structure damaged or destroyed by fire, flood, tornado, lightning, explosion, ice storm, or other natural disaster;
- 5 The construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; or
- 6 **The renovation of an existing building or unit of an existing building when at least 75 percent of the square feet of the building or unit is renovated and notification is sent to the Department of Revenue.** This project is the **only** project that requires the general contractor or, if there is no general contractor, the project owner to submit a notification to the Department. The notification form can be obtained from the Department or it can be found on our Web site. The notification contains information that will assist you in determining whether the project will qualify for the exemption. The Department will send an acknowledgment. A copy of the acknowledgment must be provided to every contractor or subcontractor working on the project in order to exempt their contractor labor charges from tax. The information

provided in the notification is subject to review and audit by the Department.

Renovation means the rehabilitation, replacement, or reconfiguration of the walls or fixtures. Renovation does not include merely painting walls or replacing floor coverings, ceilings, siding, windows or a roof.

Building materials and fixtures annexed to real estate include, but are not limited to: cabinets, central air conditioners, heat pumps, water heaters, furnaces, insulation, wiring, curtain rods, awnings, concrete, garage door openers, alarm systems, wallpaper, paint, drywall, roofing materials, plumbing, floor coverings, and lumber.

All contractors will continue to pay or collect sales tax on their building materials and fixtures based on their contractor option.

Building means any freestanding structure annexed to land, enclosed within a roof and exterior walls, regardless of whether enclosed on all sides. Building includes mobile and modular homes.

Unit means a physical portion of a building designated for separate ownership, rental, or occupancy, such as an apartment.

Structure means any construction composed of parts arranged and fitted together in some way. Structure includes items such as bridges, dams, television towers, fences, sidewalks, driveways, decks, billboards, streets, roadways, street lighting, sewers, waterlines, and oil, gas, and water wells.

Labor-only contracts. Contractors who are hired to apply, install, or repair building materials or fixtures owned by another person (labor-only contract) are required to collect sales tax on their labor charges. Such contractors are retailers and must hold a sales tax permit.

Collecting and remitting tax on lump-sum charges for materials and labor. Option 1 contractors are required to collect and remit sales tax on their labor-only contracts. Option 1 contractors are also required to collect and remit sales tax on the total amount charged for any materials and labor.

Option 1 contractors, when filing their sales tax return, can take a deduction for amounts (net of taxes) paid to subcontractors on which tax was paid.

Option 2 and Option 3 contractors are required to collect and remit sales tax on their labor-only contracts. In addition, Option 2 and Option 3 contractors who charge a lump-sum

amount for materials and labor are required to collect sales tax on the total amount charged.

Option 2 and Option 3 contractors, when filing their sales tax return, can take a deduction for the **cost** (net of taxes) of the tax-paid building materials and fixtures annexed to real estate or used to repair annexed property and for the amounts (net of taxes) paid to subcontractors on which tax was paid. The contractor must remit the balance of the tax collected on the project.

Collecting and remitting tax on itemized charges for materials and labor. Option 1 contractors who itemize their charges for materials and labor are required to collect and remit sales tax on the total amount charged for the materials and labor.

Option 1 contractors, when filing their sales tax return, can take a deduction for amounts (net of taxes) paid to subcontractors on which tax was paid.

For Option 2 and Option 3 contractors, the contractor's **cost** of the building materials and fixtures used on the project and the amounts paid to other contractors and subcontractors on which tax was paid can be itemized on the billing invoice. The remainder of the total contract price is the contractor labor charge that is subject to tax. The contractor must remit the entire amount of tax collected.

Collecting and remitting tax on exempt contractor labor charges. Option 1 contractors who itemize their charges for materials and labor performed in connection with the projects identified in the paragraph titled "Exempt contractor labor charges" are not required to collect sales tax on their labor charges. They are required to collect sales tax on the amount charged for the building materials. However, Option 1 contractors who charge **lump-sum amounts** for materials and labor are required to collect sales tax on the total amount charged.

Option 2 and Option 3 contractors are not required to collect sales tax on their building materials or labor charges in connection with the projects identified in the paragraph titled "Exempt contractor labor charges"

Subcontractor labor charges - no resale allowed. A contractor cannot use a resale certificate to purchase the labor services of a subcontractor tax free. All subcontractors must collect and remit sales tax on their labor charges billed to another subcontractor or contractor.

Fixed-price contracts. Contractors using fixed-price contracts entered into prior to and not completed by October 1, 2003, are required to collect sales tax on their labor charges when the labor charge is recorded as a sale.

Contractors using the **cash** basis of accounting will collect and report the Nebraska and applicable local sales tax on payments received on or after October 1, 2003.

Contractors using the **accrual** basis of accounting will collect and report the Nebraska and applicable local sales tax on sales recorded on or after October 1, 2003. On sales recorded before October 1, 2003, separately-stated labor charges are not taxable for Option 2 and 3 contractors.

The property owner may apply for a refund of the tax paid on the labor charges, provided the refund exceeds ten dollars.

Major renovation - tax on labor charges is refundable.

When the renovation of an existing building or a unit of an existing building in a single renovation project increases the market value of the building or unit by at least 100 percent, the tax paid on contractor labor charges for such project is refundable to the project owner.

The project owner may obtain a refund by filing a refund claim. The refund claim must include sufficient documentation to substantiate the amount claimed and the change in market value.

This documentation may be disclosed by the Department to any tax official in this state.

Repair and maintenance services on fixtures. Repair and maintenance performed on buildings, structures, and fixtures, such as air conditioners, furnaces, etc. is considered contractor labor, and is taxable beginning October 1, 2003. Persons performing such services will collect and remit tax on the taxable labor charges in the same manner as other taxable contractor labor (see information on "**Collecting and remitting tax**" located elsewhere in this notice).

The sale of a warranty, guarantee, service agreement, or maintenance agreement to cover the costs of replacing, repairing, or maintaining a building, structure, or fixture is taxable. If the agreement does not cover parts or labor, or only covers a portion of the parts or labor, the amount charged for parts or labor is taxable.

Equipment, materials, and supplies. All contractors must continue to pay sales or use tax on all purchases of materials, equipment, tools, and supplies used in providing their contracting, cleaning, maintenance, or repair services. Examples include, but are not limited to, hammers, air compressors, ladders, wrenches, screw drivers, sandpaper, saws, paint thinner, lumber to build forms, office and business equipment, lubricants, solvents, backhoes, cement mixers, and scaffolding.

Sales tax permit. Option 2 and Option 3 contractors are retailers and are required to obtain a sales tax permit on or before October 1, 2003, because of their new administrative responsibilities for collecting and remitting sales tax. These responsibilities are summarized in our Information Guide titled "**Nebraska and Local Sales Tax**" on our Web site at: www.revenue.state.ne.us or call 800-742-7474 (toll free in Nebraska and Iowa) or 402-471-5729 if you are calling from outside of Nebraska or Iowa.

Other information. Contractors seeking additional information are encouraged to review the updated information contained in our contractor information guides and the "Questions and Answers" that are posted on our Web site. You may also contact us by calling the telephone numbers listed above.

Record keeping. If your contractor labor charges are exempt from tax, it is necessary that you keep construction contracts, building permits, bid or building specifications, purchase orders, billing invoices, blueprints, drawings, and any other documentation that contains sufficient information to accurately describe the construction work that was completed.